INDEX

Table of Cases Cited:

Other Authorities Cited:

Supreme Court of the United States

OCTOBER TERM 1945

No.

SANTO GRASSO,

Petitioner,

—against—

OIVIND LORENTZEN, Director of Shipping and Curator for the ROYAL NORWEGIAN GOVERNMENT, operating as a NORWEGIAN SHIPPING & TRADE MISSION,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner respectfully prays for a writ of certiorari to review the decision of the United States Circuit Court of Appeals for the Second Circuit in the above case.

Summary Statement of the Matter Involved

This petition seeks to review a judgment affirming a judgment of the District Court for the Southern District of New York, entered on a decree in an Admiralty action for personal injuries suffered by the petitioner on the 15th day of May, 1942 in the course of his employment as a longshoreman aboard the respondent's Steamship "Torvanger".

The action was, in Admiralty, based on a maritime tort.

The Trial Court as well as the Circuit Court of Appeals, erroneously treated the action as a civil cause, based on negligence.

The answer denied generally and pleaded affirmative defenses; contributory negligence, assumption of risk and acceptance of some compensation payments under an award in compensation under the Longshoremen and Harbor Workers' Compensation Act (ff. 14 to 30).

The Facts*

The petitioner Grasso was a stevedore in the employ of the Northern Dock Company (f. 397), contracting stevedores engaged in loading cargo on the S.S. TORVANGER (ff. 94-95), which was docked at the New York State Pier at the foot of Columbia Street, South Brooklyn, N. Y. (f. 95). On May 15, 1942 about 10:45 in the forenoon (ff. 235, 579), Grasso was working in No. 2 hold with several other stevedores (ff. 183-184), shifting crates of cargo (ff. 183-184). To move the crates into position a cable leading from a winch on the upper deck, operated by the stevedores, was used (ff. 98, 99, 580). This cable passed through a snatch block which was located near the corner of the hold, so that when power was applied to the cable it pulled the crate into the position desired (ff. 99, 101, 581). The snatch block was fastened to a "strap" which passed around one of the ship's upright iron beams (ff. 581, 191, 238, 279, 281). The strap consisted of a wire rope an inch in diameter, six feet long, with a loop at each end into which a hook on the snatch block was hooked (ff. 106, 107). The strap was passed around the top of an upright beam (ff. 106, 107).

---

* Although there was no factual issue that the Second Circuit Court of Appeals was asked to pass upon nor that this Court is asked to consider, it might be in place to call this Court's attention to the fact that the Circuit Court of Appeals inadvertently made several material mis-statements of fact in its opinion which will be pointed out hereafter.

In the process of moving one of the crates the strap broke, causing the snatch block to fall striking Grasso and injuring him (ff. 279, 581). Shortly after this happened, the strap was examined and it was found that the strap had broken near the middle; that for about a distance of some six inches each way (ff. 188, 581) from the break the strands were rusted all the way through and that this portion was brittle and weak (ff. 189, 581).

Captain Cross, called by the petitioner, the only expert in the case, testified that such a cable in good condition had a breaking strain of 18 to 20 tons (f. 152); that if in good condition, a cable strap would not wear out in one loading operation such as loading the S.S. "Torvanger" (f. 159); that it would have to be in an abnormal condition to wear out (f. 159) and that it would not break in normal use if in good condition, while moving cases weighing up to seven tons (f. 159); that if the cable was rusted completely through the middle, it would probably break under the strain of seven tons (f. 173).

Petitioner called five eye witnesses to substantiate his contentions. Respondent called no witnesses but did read into evidence portions of a statement which denied that the chief officer personally provided the cable in question (f. 466). There was no other proof offered on behalf of respondent as to any fact in the case or who provided the cable.

The Trial Court resolved the only issue of fact in the case in favor of the petitioner stating as follows:

> **"Although respondent contends to the contrary the evidence is convincing that this strap was the ship's property and that the stevedores found it hanging on a beam in the hold when they began this work"** (ff. 581, 582).

The Trial Court was fully convinced that the petitioner had sustained his burden of proof, for at the close of the trial, the Court stated:

> **"The Court: I do not think you need too extended a discussion in your brief on the question of the strap, because I think from my recollection of the testimony that I would find in favor of the libellant on that"** (f. 562).

The Court, at that time was satisfied that the accident was caused as the result of a defective and unseaworthy strap, that an issue of fact had been established and therefore the libelant was entitled to recover (f. 562).

Thereafter the Court changed its mind and decided the case on the following erroneous interpretation of the law:

> "It does not seem to me that under the circumstances the ship should be held responsible for the result. The stevedores chose to use it instead of one of their own. In doing so they assumed the risk. It was their duty, not the ship's, to see that it was fit for their purposes" (ff. 598, 599).

The Circuit Court of Appeals did not agree with the Trial Court's statement of the law, nevertheless failed to reverse.

It seems that the Circuit Court of Appeals inadvertently overlooked the question before it treating the case as involving an issue of fact as to the respondent's negligence, when the only question before the Court was one of law.

The Circuit Court of Appeals erroneously found that the action had been instituted by a "plaintiff" predicated on a civil tort of negligence when such was not the case.

The action was in Admiralty predicated upon the vessel's unseaworthiness. The libelant sustained his burden of proof when he showed by credible and uncontradicted evidence that the cable which was owned and rigged by the vessel broke solely because of its rusty and defective condition and through no other cause, resulting in the accident complained of.

It was the respondent who failed to sustain its burden of proof by showing that the vessel was seaworthy. Respondent offered no proof whatsoever on this question.

The libelant was entitled as a matter of right to all of the benefits of Admiralty law in accordance with the uniform decisions of this Court so frequently stated since the early case of *The Frank and Willie*, 45 Fed. Rep. 494 up to the recent case of *Garrett* v. *Moore-McCormack Co.*, 317 U. S. 239, and as stated by the Second Circuit Court of Appeals in the case of *H. A. Scandrett*, 87 Fed. (2d) 708.

The Questions of Law

1. In affirming the judgment of the District Court, the Circuit Court of Appeals decided that the benefits of Admiralty law are to be denied to stevedores in an Admiralty action predicated on a maritime tort, contrary to the holdings in the cases of:

International Stevedoring Company v. *Haverty*, 272 U. S. 50 (1926);
Atlantic Transport Company of West Virginia v. *Imbrovek*, 234 U. S. 52 (1914);
Garrett v. *Moore McCormack Co.*, 317 U. S. 239.

2. The decision squarely reverses the uniform prior holdings of this Court that a vessel is liable for an accident due

IN THE

Supreme Court of the United States

OCTOBER TERM 1945

No. 340

SANTO GRASSO,

Petitioner,

—against—

OIVIND LORENTZEN, Director of Shipping and Curator for the ROYAL NORWEGIAN GOVERNMENT, operating as a NORWEGIAN SHIPPING & TRADE MISSION,

Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

JACOB RASSNER,
Counsel for Petitioner.

GEORGE J. ENGELMAN,
Of Counsel.

to the breaking of defective gear, owned and rigged by the vessel. This is contrary to the holding in the cases of:

Curtis Bay Towing Co. v. *Dean*, 1938, 199 A. 521, 174 Md. 498, Cert. Den. 1939, 59 S. Ct. 92, 305 U. S. 628;
Beadle v. *Spencer*, 298 U. S. 124;
The Arizona v. *Anelick*, 298 U. S. 110.

3. This decision also squarely reverses the uniform holdings of this Court since the case of *The Frank and Willie*, 45 Fed. Rep. 494, up to the recent case of *Garrett* v. *Moore McCormack Co.*, 317 U. S. 239, that a stevedore may maintain an action in Admiralty against a ship owner, predicated on the unseaworthiness of the vessel and need not prove negligence.

4. This decision creates new law with regard to the burden of proof, holding that in an action predicated upon the breakage of ship's gear, the seaman has the burden of proving unseaworthiness of the vessel, instead of the shipowner proving seaworthiness, as has been the law heretofore, as reiterated recently in the cases of *Garrett* v. *Moore McCormack Co.*, *supra*, and *H. A. Scandrett*, 87 Fed. (2d) 708.

5. This decision absolves the shipowner from liability where heretofore the shipowner was held liable, and places the responsibility on a stevedore for injuries due to defective ship's gear, although the defects are not observable in the exercise of ordinary care. This is contrary to the holding in the case of *Liverani* v. *Clark & Son*, 231 N. Y. 178, cited with approval in the case of *Port of New York Stevedoring Corporation* v. *Castagna*, 280 Fed. 618, certiorari denied 258 U. S. 631, and the holding in the case of *Faunterloy* v. *Argonaut S. S. Line*, 27 Fed. (2d) 50.

6. This decision creates an absolute legal defense of assumption of risk, where defects not observable in the exercise of ordinary care, cause an accident, which is contrary to the holdings in the *Liverani* v. *Clark & Son* case *supra*, *Port of New York Stevedoring Corporation* v. *Castagna* case *supra*, and the *Faunterloy* v. *Argonaut S. S. Line* case *supra*.

7. This decision is a complete departure from the well recognized law that contributory negligence of one joint tort feasor does not absolve another. This is contrary to the holding in the cases of:

Liverani v. *Clark & Son*, 231 N. Y. 178;
Port of New York Stevedoring Corporation v. *Castagna*, 280 Fed. 618, cert. den. 258 U. S. 631;
Faunterloy v. *Argonaut S. S. Line*, 27 Fed. (2d) 50;
Vanderlinden v. *Lorentzen*, 139 Fed. (2d) 995.

8. This decision absolves the shipowner from the necessity of making proper inquiry in respect to latent defects of ship's gear, and of the duty to provide gear fit for the purpose intended, which is contrary to the uniform prior holdings of this Court as expressed in the cases of:

Union Pacific Railway Company v. *O'Brien*, 161 U. S. 451;
Texas & P. R. R. Co. v. *Archibald*, 170 U. S. 665;
Gila Valley Ry. Co. v. *Hall*, 232 U. S. 94;
Choctaw, Oklahoma & Gulf R. R. Co. v. *McDade*, 191 U. S. 64;
Texas & P. R. R. Co. v. *Swearinger*, 196 U. S. 51.

Reasons for Allowance of the Writ

The Circuit Court of Appeals for the Second Circuit has decided a question of law of widespread importance to stevedores and shipowners in a way probably untenable and in conflict with all authority.

This decision bars a stevedore from maintaining an action in Admiralty predicated upon unseaworthiness and limits such stevedore exclusively to a civil action predicated upon negligence contrary to all decisions of this Court as uniformly held since the early case of *The Frank and Willie*, 45 Fed. Rep. 494, up to the recent case of *Garrett* v. *Moore-McCormack Co.*, 317 U. S. 239, and is in conflict with the decision of the Second Circuit Court of Appeals in the case of *H. A. Scandrett*, 87 Fed. (2d) 708.

This decision is in conflict with and changes the prior uniform holdings of this Court that the ship and not the injured employee has the burden of proof on the question of seaworthiness where an accident results from defective ship's gear, and is contrary to the holdings in the cases of *The Osceola*, 189 U. S. 158, *The Frank and Willie*, 45 Fed. Rep. 494, *Mahnich* v. *Southern Steamship Co.*, 321 U. S. 96 and is likewise contrary to the decision of the Second Circuit Court of Appeals in the case of *H. A. Scandrett*, 87 Fed. (2d) 708, and is in conflict with the decision of the Circuit Court of Appeals for the Third Circuit in the case of *Sieracki* v. *Seas Shipping Co., Inc.*, 1945 A. M. C. 407, 149 Fed. (2d) 98, decided April 11, 1945, two days after the decision of the case at bar by the Second Circuit Court of Appeals.

This decision decides that assumption of risk is a complete bar to an action predicated upon negligence and is contrary to the holdings in the cases of *Beadle* v. *Spencer*, 298 U. S. 124, *The Arizona* v. *Anelick*, 298 U. S. 110, *Smith* v. *Socony Vacuum Oil Co.*, 305 U. S. 425.

This decision decides that the contributory negligence of the third party exonerates a shipowner from liability for an accident caused by the breaking of its defective gear and is contrary to all prior law as enunciated in the case of *Vanderlinden* v. *Lorentzen*, 139 Fed. (2d) 995.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari issue to review the decision below.

Dated, August 7, 1945.

SANTO GRASSO,

By: JACOB RASSNER,
Counsel for Petitioner.

GEORGE J. ENGELMAN,
Of Counsel.